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HOUSE BILL 1040

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO CHILDREN; AMENDING A CHILDREN'S MENTAL HEALTH
PROVISION OF THE DELINQUENCY CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-2-21 NMSA 1978 (being Laws 1993,
Chapter 77, Section 50, as amended) is amended to read:

"32A-2-21. DISPOSITION OF A CHILD WITH A MENTAL DISORDER
OR DEVELOPMENTAL DISABILITY IN A DELINQUENCY PROCEEDING.--

A. If in a hearing at any stage of a proceeding on
a delinquency petition the evidence indicates that the child
has or may have a mental disorder or developmental disability,
the court may:

- (1) order the child detained if appropriate
under the criteria established pursuant to the provisions of
the Delinquency Act; and

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1 (2) ~~[initiate proceedings for the involuntary~~
2 ~~placement of the child as a minor with a mental disorder or~~
3 ~~developmental disability]~~ request the children's court attorney
4 to petition for that child's involuntary residential placement
5 for mental health or developmental disability services pursuant
6 to the provisions of the Children's Mental Health and
7 Developmental Disabilities Act.

8 B. If the child is placed for residential treatment
9 or habilitation pursuant to the Children's Mental Health and
10 Developmental Disabilities Act, the department shall retain
11 legal custody during the period of involuntary placement or
12 until further order of the court.

13 C. If a child is committed to a psychiatric
14 hospital for treatment or habilitation and in the event that
15 the department should be required to pay more than four hundred
16 dollars (\$400) per day because of the individualized treatment
17 plan, the annual costs over four hundred dollars (\$400) per
18 child per day will be reported annually by the department to
19 the legislative finance committee.

20 D. The child may remain in the residential
21 treatment or habilitation facility pending the disposition of
22 the delinquency petition.

23 E. When a child in departmental custody needs
24 involuntary placement for residential mental health or
25 developmental disability services as a result of a mental

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1 disorder or developmental disability, the department shall
2 request the children's court attorney to petition for that
3 child's placement pursuant to the provisions of the Children's
4 Mental Health and Developmental Disabilities Act.

5 F. A child subject to the provisions of the
6 Delinquency Act who receives treatment in a residential
7 treatment or habilitation program shall enjoy all the
8 substantive and procedural rights set forth in the Children's
9 Mental Health and Developmental Disabilities Act.

10 G. A child's competency to stand trial or
11 participate in [~~his~~] the child's own defense may be raised by a
12 party at any time during a proceeding. If the child has been
13 accused of an act that would be considered a misdemeanor if the
14 child were an adult and the child is found to be incompetent to
15 stand trial, the court shall dismiss the petition with
16 prejudice and may recommend that the children's court attorney
17 initiate proceedings pursuant to the provisions of the
18 Children's Mental Health and Developmental Disabilities Act.

19 In all other cases, the court shall stay the proceedings until
20 the child is competent to stand trial; provided that a petition
21 shall not be stayed for more than one year. The court may
22 order treatment to enable the child to attain competency to
23 stand trial and may amend the conditions of release pursuant to
24 Sections 32A-2-11 and 32A-2-13 NMSA 1978. The child's
25 competency to stand trial shall be reviewed every ninety days

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1 for up to one year. The court shall dismiss the petition
2 without prejudice if, at any time during the year, the court
3 finds that a child cannot be treated to competency or if, after
4 one year, the court determines that a child is incompetent to
5 stand trial or participate in ~~[his]~~ the child's own defense.
6 Upon dismissal, the court may recommend that the children's
7 court attorney initiate proceedings pursuant to the provisions
8 of the Children's Mental Health and Developmental Disabilities
9 Act.

10 H. ~~[Involuntary residential treatment shall only~~
11 ~~occur pursuant to]~~ No child shall be ordered for involuntary
12 treatment without having been afforded all of the substantive
13 and procedural protections set forth in the provisions of the
14 Children's Mental Health and Developmental Disabilities Act.

15 I. No treatment guardian shall be appointed for a
16 minor child unless the minor child is a resident of a
17 residential treatment or habilitation program as defined in
18 Section 32A-6-2 NMSA 1978. The appointment of a treatment
19 guardian for a minor child shall only occur pursuant to the
20 provisions of the Children's Mental Health and Developmental
21 Disabilities Act.

22 J. No proceeding under the Delinquency Act shall be
23 combined with a proceeding under the Children's Mental Health
24 and Developmental Disabilities Act."